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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

19 Cr. 833 (SHS)

5 DERREK LARKIN,
6 a/k/a "Derrek Martin,"

7 Defendant.

Sentence

8
9 New York, N.Y.
August 2, 2021
10 11:00 a.m.

11 Before:

12 HON. SIDNEY H. STEIN,

13 District Judge

14 APPEARANCES

15 AUDREY STRAUSS

16 United States Attorney for the
Southern District of New York

17 BY: KIERSTEN A. FLETCHER

18 Assistant United States Attorney

19 JEFFREY H. LICHTMAN

20 JEFFREY B. EINHORN

21 Attorneys for Defendant

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(Case called; appearances noted)

THE COURT: Good morning. Please be seated in the courtroom.

I have the presentence report for Mr. Larkin, prepared on March 16 of this year and revised on April 13 of this year, along with the addendum and sentencing recommendation of 92 months. That's a variance from the guideline range of 151 to 188 months. Total offense level of 29, criminal history category of VI, that's the recommendation of the probation department.

I also have the submission of Mr. Larkin, dated July 20, along with the attached letters and pictures, and I have received a July 26 submission of the government, which is document 312, concerning both Mr. Larkin and Mr. DePaola.

Is there any other information I should have?

Mr. Lichtman.

MR. LICHTMAN: Nothing from the defense, your Honor.

THE COURT: From the government.

MS. FLETCHER: Your Honor, as it relates to this defendant and the remaining defendants in this case, the government submitted its letter on July 22 in which we set forth our view as to the relative culpability of the defendants in this case and in the Ketabchi case.

THE COURT: Yes. I have that relevant culpability letter.

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1 MS. FLETCHER: Thank you.

2 And this morning I handed up to Ms. Blakely a signed
3 forfeiture order, consent forfeiture order for the Court to
4 enter.

5 THE COURT: Oh, yes. I see it on my desk. It
6 provides for forfeiture of \$650,000, and I am signing it, dated
7 today. That will be part of the judgment in this case.

8 Mr. Lichtman, do you have any objections to the
9 findings of fact in the presentence report, and does your
10 client have any objections to the findings of fact?

11 MR. LICHTMAN: Judge, one regarding the findings of
12 fact, which was a very minor one, with regard to when he
13 started in this scheme. Probation had said December of 2015.

14 THE COURT: What paragraph are you on, sir?

15 MR. LICHTMAN: That's paragraph 22. This is a minor
16 one, Judge.

17 THE COURT: Yes.

18 MR. LICHTMAN: It's our contention, and I believe the
19 government agrees, as per our reviewed allocution, that he
20 actually began in 2016 as opposed to December 2015.

21 THE COURT: January 2016?

22 MR. LICHTMAN: Yes.

23 THE COURT: What's the position of the government?

24 MS. FLETCHER: That's fine, your Honor.

25 THE COURT: Does the government have any objections to

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1 the findings of fact?

2 MS. FLETCHER: No, your Honor.

3 THE COURT: I'm going to adopt the findings of fact in
4 the presentence report with the following change:

5 At paragraph 22, I am changing December 2015 to
6 January 2016, and I am striking footnote No. 1.

7 Again, I'm adopting the findings of fact with the
8 exception that, in paragraph 22, I am changing December 2015 to
9 January 2016, and I am striking footnote No. 1.

10 Anything else, Mr. Lichtman?

11 MR. LICHTMAN: Judge, with regard to the three points
12 of acceptance and with the understanding that I read the
13 transcript from Mr. Larkin's wife's sentencing, where you gave
14 your opinion on the thought -- on the issue of whether or not
15 someone could get three points for acceptance off while at the
16 same time getting an adjustment upward due to obstruction, if I
17 can be heard briefly on, that Judge.

18 THE COURT: Yes. There's nothing extraordinary about
19 this.

20 I'm glad you did read the sentencing transcript of
21 Ms. Cirilo. The facts are factually different in each case,
22 but the law is that unless there is something that's
23 extraordinary here, you don't get, I think it's 4E1.1,
24 application note 4.

25 I don't have it directly in front of me. Just one

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1 moment.

2 No. That's the wrong citation.

3 3E1.1, application note 4. There's nothing
4 extraordinary here, so I find, just as I did in the case of
5 Ms. Cirilo, that he is not entitled to acceptance points.

6 MR. LICHTMAN: Judge, can I just be briefly heard on
7 this?

8 THE COURT: Of course.

9 MR. LICHTMAN: You know, I can understand if there was
10 obstruction that occurred after the case began. I think that
11 makes sense because how can you claim that you're accepting
12 responsibility when, after the case started, you did everything
13 you could to not accept responsibility? And in this case, the
14 obstruction occurred about nine or ten months before the
15 charge.

16 Once the case started, once we got into the case, he
17 immediately sought a plea deal, which is what we did. I
18 understand that probation wrote in the report that it wasn't
19 extraordinary because one of the reasons was that when he was
20 being questioned during the presentence interview, he was
21 silent. He gave an allocution, obviously, but Judge, I would
22 give an example as this.

23 You get indicted in a case, you fight the case for two
24 years, two days before the trial, you're getting, all the
25 motions *in limine* are decided. You've already had jury

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1 questionnaires filled out and you've already picked a jury,
2 right before the trial starts you decide to plead guilty that
3 day. You still get two points for acceptance.

4 And in this situation, he's done so much more. He
5 relieved the government of so much work by pleading as early as
6 he did, and the cases which have denied the three points is the
7 situation like -- we cited, the *Ray* case, where after the
8 person pleads guilty, he's still claiming that he's innocent.
9 In the *Lawani* case, the defendant committed perjury after he
10 pled guilty.

11 In this case, I think that if you look at it
12 temporally, once the case started, there was nothing that he
13 did that did not suggest he was accepting responsibility. Had
14 he obstructed after the bell had rung, so to speak, I can
15 certainly understand the reasoning.

16 THE COURT: That's not the test under the application
17 note. The application note is advisory; I understand that, but
18 that's really not the test. I understand your position. I
19 disagree with it.

20 Let me hear from the government.

21 MS. FLETCHER: Your Honor, understanding that the
22 Court disagrees with the defendant's position, the
23 government -- there is a plea agreement in this case.

24 THE COURT: I'm sorry. There's a what?

25 MS. FLETCHER: There's a plea agreement in this case.

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1 The government, as part of its plea agreement, did give the
2 defendant the three acceptance points. The government's view
3 is similar to Mr. Lichtman's, which is that because the
4 defendant's obstruction preceded both in time and -- preceded
5 in time the bringing of this case against him and because the
6 defendant did accept responsibility after the case was filed,
7 the government thought it appropriate to apply both acceptance
8 points and obstruction points here, as it had with Ms. Cirilo.
9 I understand the Court disagrees with that, but that's the
10 government's position.

11 THE COURT: All right. Fine. I appreciate that, and
12 I don't want there to be hobgoblins here in terms of
13 consistency, but I believe it is exactly as it was in the case
14 of Ms. Cirilo. I will put on the record that at least in terms
15 of my current intention in sentencing, which is for a variance,
16 that my position would be the same; that is, the sentence would
17 be the same regardless of whether I grant the acceptance of
18 responsibility points or not, because I am doing a variance.

19 Does that assist, sir?

20 MR. LICHTMAN: Yes, Judge. That's fair.

21 THE COURT: All right. I've made my decision. I've
22 heard you both.

23 I adopt the findings of fact with the noted minor
24 change.

25 I told you, in essence, that I'm determining that

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1 there is an offense level of 29, criminal history category VI,
2 guideline range of 151 to 188. That's too high, and I am going
3 to vary.

4 I've read all of this information. A couple things
5 stand out here, sir, that you have to address, and the letters
6 deal with. The letters are really quite nice. They're very
7 warm, speak to his involvement with his family, his good deeds,
8 his work. I mean, my goodness, an ironworker at \$35 an hour
9 with the potential of making \$50 an hour. That's really most
10 unusual in terms of the people I see. Loving family. That's
11 just great. It really is, and I am not sarcastic. But here is
12 my question, in part, sir.

13 Criminal history category VI. 70 months. 70 months.
14 What kind of person -- that's the wrong way to put it. What is
15 the thinking behind serving time as a very young man for
16 stealing power tools, for violating an order of protection
17 brought by his own mother and stepfather, serving time as a
18 kid -- or as a young man, not as a kid. As a kid, he seems to
19 have been sentenced to that school where they used physical
20 abuse.

21 What kind of person has a taste of incarceration, has
22 a major criminal drug conviction, goes away for more than five
23 years, knows about the Ketabchi case, gets involved in Olive
24 Branch Marketing, does this? People are complicated, but this
25 one makes no sense.

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1 MR. LICHTMAN: Well, I'm going to try to make some
2 sense of it.

3 THE COURT: Go ahead.

4 MR. LICHTMAN: Because, Judge, this is -- I've been
5 doing this for 30 years. I had Kam Wong.

6 THE COURT: I've got you beat, sir. Go ahead.

7 MR. LICHTMAN: I had the Kam Wong case in front of
8 you, which was also a troubling case, and I guess every case I
9 have in front of you --

10 THE COURT: He spends more than five years in federal
11 prison.

12 MR. LICHTMAN: I'll explain it.

13 THE COURT: He knows this thing stinks --

14 MR. LICHTMAN: You're 100 percent right.

15 THE COURT: -- and goes ahead and does it.

16 MR. LICHTMAN: But I think that you have to look at
17 every one of these cases and say how does somebody, with
18 reasonable intelligence, who should know better, because he
19 learned from the other case, how does this happen? It doesn't
20 happen in a vacuum, and I would say, Judge, if you look back to
21 the beginning, you can see something, how the seeds of this get
22 planted and get started.

23 By the time he was 18 years old, when I was getting
24 ready to go off to college, he was homeless. He was kicked out
25 of his house. He was raised by parents -- he had a difficult

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1 situation with his father. He was abused. He then had a
2 stepfather, who abused him as well.

3 Judge, I'm not suggesting, you know, the dog ate my
4 homework and these are all excuses. I'm just trying to make
5 sense of how we're here right now.

6 By the time he's 18 years old, he's gone through a
7 boarding school that eventually gets shut down. He was getting
8 abused by his father and stepfather. They send him because
9 he's having all sorts of difficult -- shockingly, difficult
10 behavioral issues.

11 THE COURT: So he throws a full beer bottle at
12 somebody's face, requiring 125 stitches, and then says: Oh,
13 you're the wrong guy. Excuse me. Don't go to the police.

14 MR. LICHTMAN: I would just suggest this, Judge, that
15 I think that this, to just look past how he was raised, the
16 difficulties -- we don't come out bad, Judge. We come out,
17 we're all equal, from birth. From birth --

18 THE COURT: He's not bad. He's got a lot of good
19 things in him.

20 MR. LICHTMAN: But that's my point.

21 THE COURT: He's not a bad person.

22 MR. LICHTMAN: But there are bad things that occurred
23 to him which triggered this, which started this cycle. As I
24 said, getting abused when he was a kid, he gets sent off to
25 boarding school where he's abused some more. Suddenly, at age

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1 18, when I'm packing up for college, he's homeless. He goes
2 back into his house to get a snowblower, and that's when the
3 criminal history starts. And that's when the cycle starts, and
4 it's one after another. And Judge, it's tough.

5 The great majority of the criminal history here
6 occurred between the ages of 18 and 22. It's hard to get a
7 job.

8 THE COURT: A 70-month federal crime?

9 MR. LICHTMAN: Well, I didn't mention that. I'm going
10 to get to that. You had to bring that up, Judge.

11 It's very difficult to get a job and be on the street.

12 THE COURT: It's not easy to be in criminal history
13 category VI, sir.

14 MR. LICHTMAN: I've had two of them.

15 THE COURT: It takes some effort.

16 MR. LICHTMAN: I've had two of them in 30 years, I
17 think. You're right.

18 What I would say is that you can see how this happens.
19 I'm not suggesting that it's right or that it's an excuse, but
20 were both trying to understand how this can happen. And it's
21 impossible, at age 22 with the criminal history that he had,
22 all of a sudden he's going to work into a place and get a job;
23 they're going to do a background check and he's finished.

24 THE COURT: He's in criminal history category VI, and
25 it looks like he's got a great union job.

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1 MR. LICHTMAN: Now he does, and I think what's
2 happened is that he realized that he didn't have to be on this
3 path. It's not like he did this for huge money, Judge. He
4 made almost no money.

5 THE COURT: I hope the union keeps him on after he
6 gets out of his lengthy prison term.

7 MR. LICHTMAN: Judge, the crime that we're here for
8 today, he made a fraction of the money that everybody else
9 made. He wasn't doing this --

10 THE COURT: And therefore?

11 MR. LICHTMAN: What I think it tells you is that
12 perhaps the guidelines are not reflective of his actual
13 culpability here; that he was not a leader, because if he was a
14 leader, he'd make millions. You've got people in this case,
15 Judge, that were living ridiculously lavish lives.

16 THE COURT: I don't understand the relevance of that
17 to this sentencing except in terms of my adjusting the *inter se*
18 of sentences such that they make sense.

19 MR. LICHTMAN: I think what I'm trying to show you,
20 Judge --

21 THE COURT: On that scale, I'm not sure how you come
22 out given the substantial sentences that have arisen out of the
23 Ketabchi case.

24 MR. LICHTMAN: I think what I would say is, Judge,
25 that if he was doing this because he thought this an

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1 opportunity to get rich, that he was taking shortcuts, that I
2 would understand your point more. He was doing this and made
3 almost no money. He was working hard. Yes, it was a criminal
4 situation, but he was working hard and making almost no money.
5 It just shows that this is -- in his mind, what he thought,
6 this is all I'm ever going to be able to do. And that's, I
7 think, just the cycle that continued; that if he was making
8 500,000, 100,000 a year, 75,000 a year even, it would be
9 different because he was making more money than, perhaps, he
10 could make. In his mind he couldn't get any job; this was all
11 he could do. He did this and put his family at risk. He put
12 himself at risk for a huge sentence with a criminal history VI,
13 for what, \$125,000 over three years? It's absurd.

14 THE COURT: And therefore?

15 MR. LICHTMAN: Therefore --

16 THE COURT: I want to understand what you want me to
17 draw from the fact that he didn't get rich.

18 MR. LICHTMAN: What I want you to draw, Judge, is the
19 fact that this is not the typical defendant in this scheme,
20 first of all. And secondly, to see that this is not somebody
21 who was looking to get rich quick. This was not done out of
22 greed, and I think that does make a difference. This was done
23 simply to survive, in his mind.

24 THE COURT: Well, I'll give you the fact, he was a
25 salesperson. I think that's all he was; the government will

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1 correct me. But I mean, my goodness, he was in Consumer
2 Shield. He was in Olive Branch. He knew exactly what he was
3 doing.

4 MR. LICHTMAN: No question.

5 THE COURT: Yes, he wasn't a closer, he wasn't a
6 leader, he wasn't a manager. That's right.

7 MR. LICHTMAN: And Judge, what I would say is the
8 government put out their letter in 2019, relative culpability;
9 they updated it with the tier A people recently, last month.
10 There are 29 people in that letter. He's No. 22. He's got the
11 highest guidelines by a mile.

12 THE COURT: I'm not sure. I think one of the other
13 defendants has written a number of letters about that letter.

14 MR. LICHTMAN: I read your latest order this morning,
15 Judge.

16 THE COURT: -- that government submission too much
17 credibility.

18 Go ahead.

19 MR. LICHTMAN: What I would say, then, Judge, out of
20 the 29 people, the people that have been sentenced, you've got
21 people that were dealing kilogram-level quantities of cocaine
22 while they were leaders in this organization. He was not just
23 a leader, he was barely a salesman. He wasn't even trusted to
24 close. That's how minor he was. That's why he made almost no
25 money. So I think that in terms of where you slot him,

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1 because, Judge, what you're here for today is not just to
2 punish Derrek Larkin but to also slot him with regard to the
3 other people that you're going to have to sentence down the
4 road.

5 THE COURT: Thank you. Thank you.

6 MR. LICHTMAN: So if I look at these other people --
7 I've looked at it -- Christopher Wilson received 78 months.
8 You've got people here that stole huge money, lived lavish
9 lifestyles, were leaders, were owners, 78 months. 72 months
10 for Jack Kavner. They were also dealing cocaine.

11 THE COURT: Do you have their criminal histories
12 there? Are any of those in criminal history VI? You're giving
13 me a little selective presentation here, which you're entitled
14 to, sir.

15 I understand you're a good defense lawyer; you're
16 making a selective presentation. But the 70 months bothers me.

17 Go ahead.

18 MR. LICHTMAN: What I would say, Judge, is that if
19 they had the criminal history that he had, I'm not
20 suggesting -- we can't make it disappear. What I'm saying is
21 that the great bulk of it occurred while he was a young man.
22 If he just had the criminal history from the West Virginia
23 case, we would be nowhere near criminal history level VI.

24 THE COURT: Fair point.

25 MR. LICHTMAN: Most of the criminal history occurred

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1 by the time he was 23, 24, and I think you have to at least
2 agree that it's traced back to a pretty awful childhood.

3 THE COURT: And you have to agree there's a difference
4 between swiping a snowblower and a 70-month federal drug
5 sentence.

6 MR. LICHTMAN: No doubt, sir. No doubt. I'm not
7 going to make that 600-pound gorilla disappear no matter what I
8 do, but I just think that --

9 THE COURT: I don't mean to give you a hard time.

10 MR. LICHTMAN: I know, Judge.

11 THE COURT: I'm trying to understand this defendant.

12 MR. LICHTMAN: I suppose what I'm trying to do is
13 explain how he got here today, because I consider this to be a
14 vicious cycle that started with him when he was a very young
15 boy. There's a reason why I'm not there, Judge, and he's not
16 here. It's because I had a stable upbringing, and by the time
17 I was 18, as I said, I was packing off to college. He was
18 living in his car. There are some --

19 THE COURT: It's not the full answer.

20 MR. LICHTMAN: It's partly an answer.

21 THE COURT: I agree.

22 MR. LICHTMAN: OK?

23 I think also the fact that in this case, another part
24 of it when you're considering sentencing decisions is you have
25 to look at everybody else in the case. He's 22 out of 29, at

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1 least according to that letter, with the understanding that
2 your Honor's not looking at that as an ironclad set of rules.
3 But he was a minor salesman. He made almost no money. He
4 wasn't trusted to even close, so at least in that sense, you
5 can see how minor he was. And, so that's part of it. And your
6 response is, Well, I understand, but I need to give this man
7 some specific deterrence. That's what you're thinking.

8 And what I would say, Judge, also in terms of other
9 cases to compare it to, as I said, we stood here for hours over
10 Kam Wong, who stole, who embezzled \$10 million as CEO of a
11 bank, who did the most, tiniest ridiculous frauds, about
12 forging dental bills in order to steal \$30,000; who had a
13 Ferrari, had a Maserati, had a Mercedes. It was ridiculous
14 what he was doing, the level that he was going in an effort --
15 and it went on for years and years, and he was stealing from
16 vulnerable people as well. And the government didn't get that
17 money back.

18 Do you remember the sentence, Judge?

19 THE COURT: No, sir.

20 MR. LICHTMAN: 66 months. The government, I think,
21 asked for ten years in that case, and what I would say is Kam
22 Wong --

23 THE COURT: So I've made mistakes.

24 MR. LICHTMAN: I thought you made a mistake too high,
25 Judge. Of course I'm going to think that.

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1 I guess my point that I'm trying to make is, and I'm
2 trying to -- you're right. Any defense lawyer -- I'm here to
3 selectively argue. You're the judge. Your position is to take
4 my selective arguments, take their selective arguments, put
5 them together and reach a fair decision.

6 What I'm saying, I suppose, is that when you came to
7 the Kam Wong decision, you recognized that there was a lot of
8 good despite a decade of bad. Here, what I would say, this is
9 someone who started out so far behind the eight ball that he
10 never seemed to get over it. He kept on -- the vicious cycle
11 continued and continued and continued. And now, you know, when
12 I look at where he is now, and you're saying to me basically
13 why would I give this guy a chance? What can I look at to even
14 suggest that he deserves a chance?

15 THE COURT: Well, I'm not sentencing him to -- 151
16 months is -- what -- 13 years. I'm not sentencing him to 13
17 years. I'm giving him a chance.

18 MR. LICHTMAN: I understand, Judge, but what I'm
19 looking for, a more lenient --

20 THE COURT: I don't want his kids to not have a
21 father. They're not going to have ready access to a father for
22 quite some time, but I don't want them to be left without a
23 father.

24 MR. LICHTMAN: I understand, and that's why you gave
25 the generous sentence you did to Ms. Cirilo. I understand

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1 that, Judge.

2 THE COURT: I wanted somebody home.

3 MR. LICHTMAN: I understand. Because you don't want
4 the cycle to continue.

5 THE COURT: Right.

6 MR. LICHTMAN: I get it, but what I would say is that
7 at least at this point, where we are today, you've got someone
8 who finally realized that he can do this honestly, get a real
9 job. He's got a young family. He's shown to be a great
10 father, and I think that's important, because sometimes that
11 cycle continues, Judge, and you have a bad father begats a bad
12 father begats a bad father. At least at this point, now, all
13 the letters make clear that he's been a wonderful father. He's
14 the type of father that he wished he had when he grew up;
15 perhaps he wouldn't be in the place that he's in now. And
16 that's at least some growth that you can point to.

17 THE COURT: All right. Why don't you finish up. I
18 understand your point.

19 MR. LICHTMAN: And Judge, lastly, what I would just
20 mention, and this is certainly not the tail that wags the dog,
21 he's got some significant health problems.

22 THE COURT: I saw that.

23 MR. LICHTMAN: And he's also been seeing, and I also
24 would add, if I could just go back, is that he's been seeing a
25 therapist for years -- it wasn't just when he was arrested in

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1 this case -- to try to understand how he got here. It wasn't
2 like he's not trying to understand. And I think that's what
3 led to the position where he is today, where he's now, I
4 believe, finally fixed. But with regard to the health issues,
5 he's going into prison. Covid is rearing its ugly head again.
6 He's got a mass in his chest. He's got other issues. He has
7 not been able to get vaccinated because of his sickness.

8 THE COURT: I saw.

9 MR. LICHTMAN: And that's not going to help when he
10 goes to prison.

11 THE COURT: No.

12 All right. Thank you. I understand.

13 MR. LICHTMAN: Thank you, Judge.

14 THE COURT: Government.

15 MS. FLETCHER: Yes, your Honor, briefly, and primarily
16 to just address some of the questions that arose during the
17 Court's conversation with Mr. Lichtman.

18 The Court is right. Mr. Larkin was a salesman. He
19 was only ever a salesman. That's what puts him, in the
20 government's view, in tier 3 in our letter addressing relative
21 culpability.

22 What I would point out to the Court with respect to
23 that letter is that though he is a salesman, he is near the top
24 of the list of salesmen. He is above Andrew Owimrin, for
25 example, and there are a couple of reasons for that.

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1 First, in addition to being a salesman at Olive Branch
2 Marketing and later at Consumer Shield, the debt relief
3 spin-off of Olive Branch Marketing, the defendant was aware
4 about issues with merchant accounts, issues with charge-backs
5 that existed at Olive Branch, and himself opened up a merchant
6 account that could be used to further this scheme that was
7 going on at Olive Branch.

8 And as the Court will recall from the trial of Andrew
9 Owimrin, the debt-relief scheme, operating under the name
10 Consumer Shield, was essentially a scheme to sell debt-relief
11 services to victims who were broke because they had purchased
12 BizOps Services, and though the defendant was not a closer on
13 that floor, he was the person responsible for calling the
14 victims and saying something to the effect of: We hear you've
15 lost all your money in BizOps. Do you want us to help
16 negotiate a settlement of your various credit card debts?

17 And so, like Andrew Owimrin, in the government's view,
18 that's a pretty strong reflection of his knowledge that this,
19 that Olive Branch was operating a criminal scheme. That
20 knowledge, from his perspective, and I made these points with
21 respect to Ms. Cirilo, was only solidified when his home was
22 searched in 2017 and when several of his coworkers, including
23 his former bosses, were charged criminally and either pleaded
24 guilty or were convicted after trial.

25 So notwithstanding that, the fact that he participated

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1 in that scheme for many years and had not been charged, that
2 he -- it was a near miss, I would say, from this defendant's
3 perspective, and notwithstanding that near miss, he decided to
4 go and work for another BizOps floor, where he continued to
5 speak to customers; where, when law enforcement came knocking,
6 he engaged in obstruction and wiped evidence from his cell
7 phone and, the government suspects, encouraged his wife to do
8 so, which is one of the things that landed her before this
9 Court.

10 And so all of those facts, yes, the defendant was only
11 a salesman, but he was more culpable than many, many other
12 salesmen who have found themselves within this scheme. And the
13 guidelines take into account the fact that he was not a leader;
14 that he does not have leadership points. He does have
15 obstruction points. And so the government's view that he's
16 sort of somewhere in tier 3 in terms of his role in the offense
17 and his culpability in the offense is, in the government's
18 view, supported.

19 The difference, of course, between him and the other
20 defendants in tier 3 is his very, very serious criminal
21 history, and that is why the government submits that a sentence
22 within the stipulated guidelines range, not the guidelines
23 range that the Court has found applies here --

24 THE COURT: The bottom is 92, if I remember correctly.

25 MS. FLETCHER: That's right, your Honor.

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1 -- that that is what leads the government to its
2 recommendation that the defendant be sentenced within that
3 range, and that is, exactly as Mr. Lichtman said, because of
4 the need for specific deterrence here for this defendant in
5 light of his history both before this case ever started and the
6 facts that the Court has learned about this defendant during
7 this and the prior case.

8 Those were the points I wanted to make, your Honor.

9 Unless the Court has any questions, the government's
10 happy to rest on that and its submissions.

11 THE COURT: All right. Thank you.

12 Mr. Larkin, you've heard my concerns. You have the
13 right to speak to me, sir. You don't have to. Anything you
14 say can be used against you, but you can tell me anything you'd
15 like.

16 THE DEFENDANT: First, I would like to thank you for
17 allowing me to speak today, Judge.

18 I've made a lot of mistakes in my past, before, that
19 I'm not proud of. Just recently, over the last couple years, I
20 decided to seek therapy to try to help me with some of those
21 issues and understand why those mistakes were made.

22 Excuse me.

23 THE COURT: Take your time.

24 THE DEFENDANT: Now having a family and being able to
25 get into the ironworkers union and see that I could head down a

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1 straight path, I'm -- you know, I'm grateful for that. That's
2 something I really am grateful for. I'm somewhat haunted
3 about, you know, reading about all this stuff with these
4 victims and what's been done to them, and I want to apologize
5 to them. If I could apologize to each and every one of them, I
6 would do that, and I feel terrible for -- give me one sec here.

7 I feel terrible for everything that's happened. I
8 never thought I would see myself in this position again. I
9 never wanted to see myself in this position again is what I
10 should say, and I think that -- I think that I am a good person
11 who's made a lot of mistakes. And you know, I think that my
12 future intentions are absolutely good now.

13 You know, this ironworkers job is probably the best
14 thing that's ever happened to me, you know, besides my family.
15 It's given me, you know, something that I never thought I would
16 have as far as good pay, benefits, and consistent work.

17 So with that being said, I would -- I would again like
18 to apologize to you, to the victims in this case, and I just
19 want to say I'm sorry.

20 THE COURT: Let me ask you a question that I sometimes
21 find it appropriate to ask. Sometimes people can't answer it.

22 You had more than a taste of prison, both state jail
23 and the very serious federal prison sentence for drugs.
24 Because of your work at Olive Branch, because of your knowledge
25 of what was happening in Ketabchi, because of what you were

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1 doing on the sales floor, you knew all of this was wrong, and
2 you knew what prison looked like and smelled like and felt
3 like, and you knew what it could do to a family -- I don't
4 think you had a family at that point.

5 Given all that, why did you do this?

6 THE DEFENDANT: I think that I just didn't think -- I
7 just didn't think it was possible for me to, you know, obtain a
8 job like an ironworker or something like that, so I kind of
9 strayed off. I kind of strayed off the path that I was trying
10 to, you know, create for myself and I rationalized it. And by
11 rationalizing it, you know, I put it in my head that -- that it
12 was, that it was OK for a little while. And then I just -- I
13 just -- excuse me. I'm sorry. Just give me a second here.

14 THE COURT: Take all the time you need.

15 THE DEFENDANT: I just wanted to try to get my life
16 together, and when I had that opportunity presented me in the
17 future, I was -- you know, I was able to see. I actually -- I
18 actually like the ironworkers. It's a very grueling job, but
19 it's -- it's a good job, and I just -- I don't know. I never
20 saw myself having an opportunity to do something like that, so
21 that's where the rationalization comes in.

22 THE COURT: Do you think you're able, are you able to
23 keep this job after you come out?

24 THE DEFENDANT: I hope so.

25 THE COURT: Did you explore that with anyone in the

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1 union?

2 THE DEFENDANT: I haven't really spoken to anybody
3 about it yet until I saw what, saw what would happen today.

4 THE COURT: All right. Thank you, sir. You may be
5 seated.

6 I think you should continue to work on trying to
7 figure it out.

8 There are a number of considerations here, which I'm
9 sure your lawyers explained to you. One of them is punishment.
10 Part of punishment depends on the criminal history category
11 you're in, not as a rote matter, because the guidelines are
12 advisory at this point; they're not mandatory, but they are a
13 function of your criminal history, of the illegal things you
14 have done and gotten punished for in the past. It has to be
15 taken into account.

16 So punishment is relevant here, as is specific
17 deterrence, which I think is also relevant in your case, given
18 your history, and important as well, general deterrence. If
19 you were following any of the sentences in the Ketabchi case,
20 you know that's a factor.

21 These scams are extremely painful, hurtful. I don't
22 know if you've read any of the testimony of the victims in
23 Ketabchi. People were ruined. Some people were absolutely
24 ruined. People's retirements disappeared. They had no idea
25 how they were going to live. People broke down on the stand

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1 here. There was one woman who testified by video. It was
2 clear she wasn't all there, but she was hounded -- not by
3 you -- to my knowledge, not by you. But to the extent the law
4 has a role to play in making sure other scams don't start or
5 other scams aren't continued or for that matter that people
6 understand that there are criminals afoot who are trying to
7 steal their money from them, including you, significant
8 sentences make sense.

9 Nonetheless, even if I were to find that it was an
10 appropriate sentence, 92 months, which I don't, a variance is
11 appropriate here. I'm going to sentence this defendant to 72
12 months' incarceration; five years' supervised release. That's
13 higher than I would normally do, but given the expanse of prior
14 criminal undertakings and crimes, I think five years of
15 supervised release makes sense.

16 I will say for the record I certainly hope he is able
17 to keep his job. That job is important, and it's a worthwhile
18 and meaningful job, and I think it helps Mr. Larkin have
19 meaning in his life, through a more valuable outlet than the
20 prior outlets he's found. So to the extent the union allows
21 him to keep the union accreditation and his job, that, I think,
22 will be of great assistance in his rehabilitation.

23 I've signed the forfeiture order.

24 What's the position of the government on restitution?

25 MS. FLETCHER: Your Honor, the government would ask to

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1 submit a proposed restitution order for this defendant within
2 90 days. And as the government indicated at Ms. Cirilo's
3 sentencing, we anticipate that the proposed restitution sum
4 will be joint and several for many of the defendants currently
5 in the Cheedie case.

6 THE COURT: What's the position of the defense? I'm
7 inclined to give the government 90 days. The statute certainly
8 does.

9 MR. LICHTMAN: Judge, that's fine.

10 THE COURT: All right.

11 Prior to 90 days, I want a submission on restitution
12 from the government with a position of what the defense is and
13 a submission from the defense if the defense disagrees with the
14 government's position.

15 All right. Mr. Larkin, if you would stand.

16 I hereby find the offense level is 29. The criminal
17 history category is VI. The guideline range is 151 to 188
18 months. Pursuant to the Sentencing Reform Act of 1984, it is
19 the judgment of this Court that the defendant, Derrek Larkin,
20 is hereby committed to the custody of the Bureau of Prisons to
21 be imprisoned for a term of 72 months.

22 Upon release of imprisonment, Mr. Larkin shall be
23 placed on supervised release for a term of five years with the
24 conditions recommended by the probation department.

25 He will be sentenced to the mandatory conditions that

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1 are set forth on page 37 of the PSR, which is document 211. In
2 addition, Mr. Larkin shall comply with standard conditions 1
3 through 12, which are set forth on pages 37 and 38 and 39 of
4 the presentence report. I also sentence Mr. Larkin to the
5 special conditions which are set forth on page 39 of the
6 presentence report, including the search condition, outpatient
7 treatment condition, access to requested financial information
8 condition, not incurring new credit charges condition, and that
9 he be supervised by the district of residence while on
10 supervision.

11 I'm not imposing the third-party risk condition, but
12 all other special conditions set forth on page 39 are now
13 imposed.

14 Within 72 hours of release from the custody of the
15 Bureau of Prisons, Mr. Larkin shall report in person to the
16 probation department in the district to which he is released.

17 I'm not imposing a fine because I find he lacks the
18 ability to pay a fine, after taking into account the
19 presentence report as well as the forfeiture and the expected
20 restitution order here.

21 I'm giving the government 90 days to propose a
22 restitution order.

23 I hereby order Mr. Larkin to pay to the United States
24 a special assessment of \$100, which is due immediately.

25 I've sentenced Mr. Larkin below the guideline range.

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1 And I should say and I've put on the record before, if I had
2 granted the three points down for acceptance of responsibility
3 such that the guideline range, bottom of the guideline range
4 would have been 92 months, and the offense level would have
5 been 26 with a criminal history category of VI, my sentence
6 would still be the same.

7 It's based on his remorse. It's based on his family
8 circumstances, based on the fact that he has a solid job, and I
9 want him to be able to return to that job. Those are the
10 reasons for the variance.

11 I believe the sentence is appropriate given the
12 seriousness of the offense and the defendant's criminal history
13 and the need for punishment and deterrence.

14 Mr. Larkin shall surrender for service of sentence at
15 the institution designated by the Bureau of Prisons on or
16 before 2 p.m. on September 10, 2021.

17 MR. LICHTMAN: Your Honor, because of his health
18 situation, the fact that he's going to receive a scan every
19 three months to see if this growth has changed, I would
20 respectfully ask if we could have a surrender of 90 days to let
21 him have the next scan while he is out, because I'm afraid if
22 he goes in --

23 THE COURT: How often is the scan?

24 MR. LICHTMAN: Three months.

25 THE COURT: There's one this week, right?

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1 MR. LICHTMAN: He had it a while back, and he received
2 the results a couple of days ago. It has not grown, but they
3 insisted that he come back within three months. So it would be
4 before the 90 days out that he have the next scan.

5 THE COURT: What's the position of the government?

6 MS. FLETCHER: Your Honor, this strikes the government
7 as something that is going to recur every 90 days, and so the
8 government would favor keeping the defendant's surrender date
9 five weeks from now, and I expect there will also be a request
10 from Mr. Lichtman that the Court recommend the defendant be
11 designated to a facility that can address these and other
12 medical conditions that may arise.

13 MR. LICHTMAN: Judge, short of there being a change in
14 his condition, I see no reason to ask for anything else. If
15 there's something that requires surgery to remove a cancerous
16 mass, that may be something that would get me back here. But I
17 understand the severity of the sentence and I understand that
18 I'm also only asking for one more scan. He needs to go to a
19 few doctors as well during this period. He does have
20 significant other conditions.

21 THE COURT: I'll do the 90 days. The surrender date
22 is November 5. At or before 2 p.m. on November 5.

23 MR. LICHTMAN: Thank you, Judge.

24 THE COURT: Do either counsel know of any legal reason
25 why the sentence should not be imposed as I have stated it?

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1 Mr. Lichtman.

2 MR. LICHTMAN: No, your Honor.

3 THE COURT: Ms. Fletcher.

4 MS. FLETCHER: No, your Honor.

5 THE COURT: I hereby order the sentence to be imposed
6 as I have stated it.

7 Mr. Larkin, you have the right to appeal the sentence
8 I've just imposed on you. If you cannot pay the cost of an
9 appeal, you have the right to apply for leave to appeal *in*
10 *forma pauperis*.

11 Ms. Fletcher, in the plea agreement, what was the top
12 of the range on a limited waiver?

13 MS. FLETCHER: Your Honor, I believe it was 115
14 months.

15 THE COURT: Is that your way of saying that's what it
16 was, or are you saying something short of that?

17 MS. FLETCHER: I'm saying something short of that.
18 May I have a moment, your Honor?

19 THE COURT: Why don't you look it up in the PSR.

20 MS. FLETCHER: That's exactly what I'm doing, your
21 Honor.

22 I'm now confident it was 115 months.

23 THE COURT: All right.

24 Mr. Larkin, I do wish to inform you that in your plea
25 agreement you agreed to waive your right to appeal the sentence

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1 and you agreed to waive the right to collaterally attack the
2 sentence to the extent I sentenced you to 115 months or fewer
3 months, and indeed, I've sentenced you to far fewer months,
4 specifically 72 months.

5 Do you understand your appeal rights, sir?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right.

8 Mr. Lichtman, do you have a recommendation that he be
9 housed in the tristate area in order to facilitate family
10 visits? I'd like him to be able to keep some touch with his
11 family.

12 MR. LICHTMAN: Yes, your Honor.

13 THE COURT: I hereby recommend to the Bureau of
14 Prisons that Mr. Larkin be housed in the tristate area in order
15 to facilitate visits with his family, who live in New Jersey.

16 Anything else?

17 Mr. Lichtman.

18 MR. LICHTMAN: Nothing from the defense.

19 THE COURT: Government.

20 MS. FLETCHER: Your Honor, the government moves to
21 dismiss open counts at this time.

22 THE COURT: Thank you. Granted.

23 Mr. Larkin, you're going to have to figure out what
24 really led you to do so this. It wasn't a lapse of a moment or
25 two. It's a number of lapses. It's not a lapse of youth only,

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1 as Mr. Lichtman would have it, but serious criminal
2 undertakings as an adult. I think you're on your way to
3 figuring it out. I think your job will help you never fall
4 back into that. Not only for the money, I don't think it's the
5 money. I don't think you were motivated by money the way other
6 people are. I think your family will help you. I think your
7 job will help you, and it's you who will help you the most.

8 Good luck to you, sir. I never want to see you again.

9 Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. Thank you.

12 (Adjourned)